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EXAMINER

SASAKI, SHOGO

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,308	Applicant(s) WINTHER ET AL.	
	Examiner Shogo Sasaki	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) 33-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 40-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Amendments to the claims; the specification; and the drawings are acknowledged.

Drawings/Specification

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character not mentioned in the description: The reference character “124” in Figs 2 and 3. It is noted that the reference character “124” in the provisional application (Fig. D; page 10; and etc) designates a syringe or probe in completely different part of the apparatus.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

This application claims priority to other applications, thus, for clarification purposes, the examiner will address the effective filing date granted to the presently pending claims. The present claims find the earliest support only in prior PCT application, PCT/US03/40520. That is the first instance in the priority chain in which a processing system including a climate control device; a data processing device for controlling the climate control device; and a sensor device providing feedback signal to the climate control device is disclosed. Therefore, the present claims are granted an effective filing date of 12/19/2003.

Claim Interpretations

4. Claims 1 and 40 do not positively set forth "at least one slide" and "a processing protocol" as part of the claimed subject matter. Any further references (e.g., sample/slide portions of claim 9 and 48) to said elements were not given patentable weight even if those references further limit said unclaimed element. Applicant attempts to further define the claimed elements in relationship to how applicant intends for the respective elements to be used or function with the unclaimed slide or protocol. The structure of the device is not defined or structurally limited by the intended use/function with other unclaimed elements.

As to the data processing device *for storing* a processing protocol in claims 1 and 40, for instance a processor (normally equipped with cache) capable of storing any information meets the claim.

5. Regarding claims 1 and 40, the term “section” does not inherently impart any specific structural requirement. It is somewhat unclear how such a section can be labeled or referenced a “sample processing” or “staining” portion of the apparatus. The elements of said claims do not structurally limit the section to a particular processing or staining structures. The phrases “sample processing” or “staining” implies the intended use of said sections. The term section was interpreted to mean a portion of the housing that may be used for processing or staining a sample; and is capable of accommodating a slide. The same applies to the section in claims 7, 8, 46 and 47. For instance, the reagent in the container in claim 8 is not recited as part of the claimed invention.

6. Claims 4 and 43 do not positively set forth “an air inlet/outlet manifold” as part of the claimed subject matter. Claims 1, 4, 40 and 43 do not recite that the housing comprises inlet, outlet or corresponding manifold. Appropriate clarification is required.

7. Regarding claims 12, 13, 51 and 52, the recitations “ensures...” are directed to the manner in which applicant intends for the pressure controller to function/perform. Applicant attempts to further define the claimed element in relationship to how applicant intends for the element to be used or function. The structure of the device is not defined or structurally limited by the intended use/function.

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It should be noted that one is not required to use the claimed device in the same manner as intended by applicant. The "ensures..." clauses are generally narrative and do not further structurally limit the apparatus.

8. Regarding claims 25, 26, 27, 29, 30, 31, 64, 65, 66, 68, 69 and 70, [claims 25 and 64] "for adapting the inflowing air with predetermined characteristics;" [claims 26 and 65] "ensuring high and uniform humidity in the chamber when..." (the phrase when implies the conditional usage of the device); [claims 27 and 66] "controls humidity by spraying water droplets or having a water surface;" [claims 29 and 68] "controls the humidity to never be below a predetermined level, to prevent drying out of the sample;" [claims 30 and 69] "for adding disinfectants, UV protectants or other compounds may be added to the inlet air to prevent microbial growth or discolouring;" and [claims 31 and 70] "addition of fluids from the group consisting of reagents, neutral gas, oxygen, carbon dioxide, nitrogen, water droplets, and formamide," which are directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art.

9. Claims 32 and 71 do not positively set forth "slide" or "a slide rack assembly" as part of the claimed subject matter.

10. It is noted that there are no specific structures disclosed for the ventilation, air manipulation, exhaustion and pressure control devices. The disclosure only discloses that the apparatus may be connected to devices that are capable of ventilating, controlling pressure, and manipulating air.

Claim Objections

11. Regarding claims 11 and 50, it is unclear if the element "a computer" is same as the data processing device in claims 1 and 40 or some other processing device. It appears that they are directed to the same thing ([0021]). It is also unclear if the protocol is the same protocol recited in claims 1 and 40.

12. Regarding claims 17 and 56, it is unclear if the element "a fan" is same as the exhaustion device in claims 16 and 55 or some other device. It appears that they are directed to the same thing (See specification; new figures; and applicant's remark filed 6/7/10). Thus the recitation should be more so "wherein the exhaustion device comprises a fan..." It also appears that the ducts are the air inlet. Appropriate correction is required.

13. Regarding claims 25 and 64 (line 5), the recitation should be "the climate control device comprises..." See specification and claims 18 and 57.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 4, 8-11, 16, 22, 23 and 40-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 4 and 43, it is unclear whether the inlet/outlet manifold is a part of the apparatus of claims 1 and 40. If so, is the inlet/outlet manifold part of the housing?

Regarding claims 16 and 55, it is unclear whether the ducts are placed in with the housing such that they communicate with outside of the housing. It is unclear if the exhaustion device exchanges air in and out of the housing ([0016]).

Regarding claim 40, the term “staining section” does not inherently impart any specific structural requirement. It is unclear how such a section can be referenced a “staining” portion of the apparatus. The element of said claim does not structurally limit the section to a particular processing or staining section. The phrase “staining” implies the intended use of said sections. Furthermore, it is noted that the preamble of claim 40 recites an automatic staining device. However claim 40 includes no structures directed towards staining or automating staining structures.

Regarding claims 8-11 and 47-50, it is unclear what is meant by “each interior space.” The new drawing (Fig. 1) and the disclosure depict that the cover is merely partitioned into multiple parts. The interior space under the partitioned cover is one interior space. Claims 1 and 7 (or claims 40 and 46) recite that the cover is a plurality of covers that cover the housing to define an interior space. There is no recited or claimed structural element(s) that requires the covered housing to be partitioned into multiple closed spaces by the plurality of cover or the housing (which is implied by the phrase “each interior space”). Furthermore, Claim 7 (or claim 46) recites that the section is a plurality of sections. One section may be considered to include subsections. For

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instance, one may choose to define a large room (a section) to include TV, relaxation, cooking or any other sections.

Regarding claims 22, 23, 61 and 62, it is unclear if the outlet is an element of the invention. Thus, it is unclear what is meant by "below" or "above." Claims 1, 19, 22 23, 40, 48, 61 and 62 do not recite that the housing is provided with an outlet positioned below or above the processing/staining section(s). The "adapted to..." clauses are generally narrative (implying the applicant intention of how the device may perform or configured) and do not further structurally limit the apparatus to a particular structural configuration. The examiner requires applicant to clearly (in the structural sense) define the claimed device, so that the device will have to be structurally capable of performing or being used in the manner recited in the process limitation.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1, 2, 3, 5, 6, 40, 41, 42, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Orimo (US 4338279).

Regarding claims 1, 2, 3, 5, 6, 40, 41, 42, 44 and 45, Orimo discloses (Fig. 3, 4 and 5; and C7/L15-C8/L33) an automatic analyzing apparatus comprising a housing frame (25); at least one sample processing section, said at least one sample processing

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section is provided within said housing (39, 40); an integral and pivotally operated cover, said cover enclosing the sample processing section and defining an interior space between the housing and the cover (26); at least one climate control device configured to control the environment within said interior space (C12/L61-C13L17); and a temperature sensor device capable of providing feedback signals to the climate control means (C12/L61-C13L17). The control means also comprises computer communicating with the control means and stores sample handling information (e.g., C10/L25-30).

In response to page 29, lines 1-12 of the remark, it is noted that the phrase “environment of interior space” is rather broad and is not only limited to the condition of the air inside of the apparatus. Please also note that the examiner is not saying that the devices of for e.g., claims 15, 20, 54 and 59, are anticipated by Orimo.

18. Claims 1-6, 12-25, 27-32, 40-45, 51-64 and 68-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Fish (US 5946221).

Regarding claims 1-6, 12-25, 27-32, 40-45, 51-64 and 68-71, Fish discloses an apparatus (abstract; and C3-C17) comprising:

- a housing frame (Fig. 1: 12 the lab; or the fume hood 14 in the lab with sliding cover in Fig. 18);
- at least one sample processing section, said at least one sample processing section is provided within said housing (The interior of the lab, 12, where technicians perform bio/chemical processing);

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- a cover defining an interior space between the housing and the cover (door or ceiling of the lab);
- at least one climate control device for controlling the environment within said interior space (controlled fume hoods);
- internal sensor devices for providing feedback signals to the climate control device (C3/L21-32);
- a data processing device for controlling the at least one climate control device and storing a processing protocol (e.g., C3/L32-45);
- wherein the sensor device is a temperature, a pressure, an airspeed, or a fume sensor (C3/L21-32);
- wherein the sensor device comprises internal sensors located inside the interior space (C3/L21-32);
- wherein the sensor device comprises external sensors located at an air inlet/outlet (C3/L21-32; and Fig. 2; 28);
- wherein the cover comprises at least one pivotal cover (door with hinge);
- wherein the cover is an integrated part of the apparatus (door with hinge);
- wherein the at least one climate control device includes a pressure control device for controlling at least the pressure (e.g., C3/L32-45);
- wherein the at least one climate control device includes humidity control within the interior space (e.g., C6/L4-19);

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- wherein the at least one climate control device includes a temperature control device for controlling the ambient temperature of the air within the interior space (e.g., C6/L4-19);
- wherein the climate control device comprises a ventilation system (fan) with an exhaust device having a plurality of ducts (the controlled fume hoods communicating with exterior: See Fig. 2; A fume hood will have to have a fan);
- wherein the ventilation system comprise a fan in an opening (The fume hood or the air supply will have be provided with fans);
- further comprising at least one air manipulation device (See entire disclosure);
- wherein the climate control device comprises an exhaust device capable of removing fumes from the interior space (the fume hood: also the fume hood exhaust duct is placed above the hood and leaves the lab in ceiling);
- wherein the climate control device comprises a device fore toxic control (the fume hood), temperature, humidity control (e.g., C6/L4-19);
- wherein the device configured to recycle air comprises a filter capable of cleaning the air (The examiner asserts that all air supply (left portion of Fig 2) includes filters.);
- wherein said cover is provided with at least one seal element (The sliding door of a fume hood (fig 18) doors are generally equipped with a gasket. The examiner asserts that the feature is inherently disclosed. Also the door to a laboratory is generally equipped with a sealing element. For energy savings or fume leaking prevention.);

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- wherein an inlet comprising at least one air inlet opening in the housing frame (Fig. 2: the inlet shown in the left portion), and wherein an air manipulation device are provided in said inlet (C6-C17: See heated air supplied from supply duct.);
- wherein the air manipulation device comprises an air recycling device (See entire disclosure);
- wherein the air manipulation device comprises an air additive supply (water droplets) device (All labs are equipped with fire extinguishing devices and sprinklers.); and
- wherein the apparatus comprises at least one sensor device, said sensors being arranged in the vicinity of the cover means and/or in the vicinity of the sample carriers on a carrier rack assembly (The sensors are relatively all in the vicinity of the cover/door and the processing section.).

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

21. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

22. Claims 1, 2, 5-11, 15, 16, 17, 19-22, 25, 27, 30, 31, 40, 41, 44-50, 54, 55, 56, 58-61, 64, 66, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ljungmann (US 6017495) in view of Fish (US 5946221).

Regarding claims 1, 2, 5-11, 15, 16, 17, 19-22, 24, 25, 27, 30, 31, 40, 41, 44-50, 54, 55, 56, 58-61, 63, 64, 66, 69 and 70, Ljungmann discloses (abstract; and Figs. 1-5) a staining apparatus for staining of tissue specimens placed on microscope slides comprising a number of staining stations (4) and other working stations (1, 2, 3). The device includes a program-controlled staining process (abstract; and disclosure). The multiple cover (Fig. 2: 33 and 35) defines an interior space over the number of processing stations and the housing (The examiner also asserts that dividing the cover into multiple sections to hover over each processing station is obvious. Separating a

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device into multiple parts that were integral involves only routine skill in the art. As to the seal on the cover, Ljungmann teaches the environmentally and operator friendliness of the invention (C4/L18-35). Providing a seal for the cover to prevent the leak of toxic reagent is obvious). The stations are heated by means of hot air supplied from a fan 15 in combination with a heating element (C2/L47-49; and Fig. 2). The apparatus is also provided with an exhaustion/ventilation (32) comprising a ventilating fan which is combined with a filter system for absorption of gases from solvents (C4/L36-45). The cover (33+35) is hinged at the upper rear edge of the apparatus and in addition is coupled to a pair of gas damping cylinders 34 (C4/L36-45). Water is supplied to the vessels (9) via water filling pipes (10) communicating with a water intake (11). Further, in connection with the vessels 9, there is arranged a drain hose 11 for drainage of sprinkling water from the rinsing baths (C2/L38-45). This hose is connected to a water outlet (13).

Ljungmann does not explicitly disclose an interior air/environment condition detecting sensors with a controller for controlling the disclosed ventilation system or heated air supply fan. (However, the controller for controlling the Ljungmann's ventilation or water additive system is obvious, and it will have to part of the staining procedure controller [36+37].)

Fish discloses a climate control device controlled by the computer/processor receiving data from the sensors detecting the climatic parameter as set forth above.

It would have been obvious to one having ordinary skill in the art at the time of the invention to monitor the interior temperature or air condition (not visible to human

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eyes) using sensors and couple the sensor to a controller to automate the environmental control.

23. Claims 1, 25, 26, 28, 40, 64, 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fish (US 5946221) in view of Denison (US 1829341).

Regarding claims 1, 25, 26, 28, 40, 64, 65 and 67, Fish discloses all of the limitations as set forth above.

Fish teaches the humidity control. However Fish does not teach the use of humid filter to maintain the high interior humidity.

Denison discloses an air conditioning (heating) device comprising a humid/moist filter (e.g., page 1, lines 21-25 and 65-75) for ensuring the proper interior humidity.

It would have been obvious to one having ordinary skill in the art at the time of the invention to include the humidity control device taught by Denison to the device of Fish, for the purpose of preventing low interior/ambient air humidity.

Response to Arguments

24. Applicant's arguments filed 6/7/2010 have been fully considered.

25. The objections to the claims; the specification; and the drawings from the previous action are withdrawn.

26. In response to page 25, 3rd paragraph of the remark, the 112 rejections of claims 1-32 and 40-71 as being incomplete for omitting essential elements are withdrawn.

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27. In response to page 25, last paragraph of the remark and page 27 second paragraph, the 112 rejections of claims 1-32 and 40-71 as being incomplete for omitting essential structural cooperative relationships of elements; and the 112 rejections of claims 1, 2-7, 10-20, 22, 23, 28, 30-32, 40, 43-46, 49-59, 61, 62, 67 and 69-71 from the previous action are withdrawn.

28. The 112 rejections of claims 1 and 40 for lacking antecedent basis for "the climate control means" are withdrawn.

29. The 112 rejections of claims 4 and 43 for lacking antecedent basis for "the building" are withdrawn.

30. The 112 rejections of claims 4, 7, 11, 18, 43, 46, 50 and 57 for including the phrase "such as" are withdrawn.

31. In response to page 26, last paragraph of the remark, the 112 rejections of claims 20 and 59 are withdrawn.

32. Applicant's arguments with respect to the prior art rejections have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shogo Sasaki whose telephone number is (571)270-7071. The examiner can normally be reached on Mon-Thur, 10:00am-6:30pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SS

/Jill Warden/

Supervisory Patent Examiner, Art Unit 1797

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